

WASHINGTON STATE
EXECUTIVE ETHICS BOARD
2425 Bristol Court SW – 1st Floor Conference Room 148 – Olympia, WA

September 8, 2006
Regular Meeting Minutes

A. Preliminary Business

1. Roll Call

The regular meeting of the Washington State Executive Ethics Board (EEB) was called to order by Chair Trish Akana at 9:00 a.m. Also present were Members Paul Zellinsky, Judy Golberg and Neil Gorrell. Vice Chair Evelyn Yenson would be joining the meeting via telephone prior to the rule making agenda item. Board staff in attendance included: Executive Director Susan Harris, Senior Assistant Attorney General Nancy Krier, Assistant Attorney General Mike Tribble and Investigator Sue Jones.

2. Approval of Agenda

Motion 07-015 Moved by Member Golberg, seconded by Member Zellinsky:

The Board approves the September 8, 2006 agenda as presented.

The motion passed unanimously.

3. Approval of July 13 and July 14 Meeting Minutes

Member Golberg noted that under "Roll Call" the special meeting was listed as a regular meeting. She also requested that it be noted that Vice Chair Yenson arrived at 1:15 p.m.

Motion 07-016 Moved by Member Golberg, seconded by Member Gorrell:

The Board approves the July 13, 2006 minutes as amended and approves the July 14, 2006 meeting as presented.

The motion passed unanimously.

B. Stipulation and Order

1. EEB Case No. 05-041 (Rebecca Neal)

Susan Harris briefed the Board on the proposed stipulation and order. Ms. Neal agreed that she violated RCW 42.52.160 when she used her state computer, Internet, time and e-mail for non-work related purposes. The Board's deliberation on the proposal was deferred until closed session.

2. EEB Case No. 06-022 (William Yeung)

Ms. Harris briefed the Board on the proposed stipulation and order. Mr. Yeung agreed that he violated RCW 42.52.160 when he used his state computer, Internet, time, e-mail and instant messaging for non-work related purposes. The Board's deliberation on the proposal was deferred until closed session.

C. Rule Making

Vice Chair Yenson was connected via telephone.

1. Rules relating to the use of an Administrative Law Judge

Susan Harris briefly updated the Board on a discussion held at the July 14th retreat regarding potential rule making on the use of an Administrative Law Judge (ALJ), and when to use that option.

Ms. Harris reported that during the drafting stages of rule making, staff discovered that the statute will not allow the Board to amend its rules to eliminate the option that gives the respondent the opportunity to request an ALJ unless the Board wants to give up the right to impose penalties greater than \$500.

The Board requested that staff track costs incurred by having an ALJ, discuss the issue with the Legislative Ethics Board and the Judicial Conduct Commission and research the types of cases being presented.

2. Discussion of possible rulemaking

a) WAC 292-100-007 Definitions

Ms. Harris summarized new definitions to help clarify and give direction to organizations who might be affected by new legislation, RCW 42.52.560, which allows state employees to use state resources to distribute communications from certain groups to other state employees.

Member Golberg suggested adding designated bulletin boards to (5) as a method of distribution.

Nancy Krier provided extensive background on electioneering communications and express advocacy to clarify the definition of support or oppose. She noted that language was developed after review of several court cases, both state and federal.

b) WAC 292-100-045 Executive director's dismissal of complaints

The title has been amended to clarify that the Board also has authority to issue dismissals.

Chair Akana requested that (2) be rewritten to clarify that written notice will be provided to the complainant, respondent, and the board when dismissed by either the executive director or the board.

c) WAC 292-100-050 Determination on reasonable cause

Amendments to this rule were made for ease of reading.

d) WAC 292-100-150 Discovery – Production of documents and use at hearing

The amendment allows time for staff to copy the materials to be included in the mailing packet and gives the parties an opportunity to provide additional materials at the hearing, if necessary.

The Board discussed defining “good cause” and directed staff to reference Civil Rule 60.

e) WAC 292-100-160 Conduct of hearings

Proposed changes clarify the role of the administrative law judge when sitting with the board or sitting alone.

If approved, staff will file a CR102 with the Code Reviser and schedule a public hearing.

Motion 07-017 Moved by Member Golberg, seconded by Member Gorrell:

The Board approves proposed rule making on WAC 292-100-007 Definitions, WAC 292-100-056 Executive director’s dismissal of complaints, WAC 292-100-050 Determination on reasonable cause, WAC 292-100-150 Discovery—Production of documents and use at hearing and WAC 292-100-160 Conduct of hearings as amended.

The motion passed unanimously.

D. Board Interpretations

1. Draft Interpretation 07-01, When Matters May Be Considered “Cured”

Ms. Harris summarized a draft interpretation to provide guidelines to stakeholders and staff when determining if a complaint has been cured.

Following discussion, the Board decided not to adopt the interpretation since the facts must be considered on a case-by-case basis.

2. Draft Interpretation 07-02, Distributing Communications from an Employee Organization or Charitable Organization

Susan Harris discussed the interpretation to offer guidance to stakeholders on the implementation of RCW 42.52.560, the statute that allows state resources to be used to distribute communications from an employee or charitable organization, while rule making is in progress.

Ms. Harris noted that if approved, the Interpretation would be renumbered to 07-01 and would include the addition of designated bulletin boards as a method of distribution.

Motion 07-018 Moved by Member Gorrell, seconded by Member Golberg:

The Board approves Interim Interpretation 07-01, Distributing Communications from an Employee Organization or Charitable Organization as amended.

The motion passed unanimously.

E. Advisory Opinion Request

Washington State Patrol Fire Training Academy – may employees who live a fair distance from their work site stay overnight in the work facility without cost?

Susan Harris introduced Juliet Wehr Jones, Labor and Policy Advisor for the Washington State Patrol (WSP) and summarized a request for an advisory opinion on whether WSP employees can use facilities of the WSP Fire Training Academy in North Bend to stay overnight and avoid a long commute home. She noted that unlike some agencies, WSP does not have statutory authority to have staff stay overnight and, although a convenience, it does not serve a business purpose.

After discussion, the Board requested Ms. Wehr Jones research the issue further and bring the matter back at the October meeting.

F. Public Comment/Board Member Comments

Chair Akana presented Paul Zellinsky with a plaque representing his time served on the board. Member Zellinsky thanked his fellow members and staff for their friendship. Susan Harris also expressed her appreciation for his support and guidance.

Member Zellinsky left the meeting at 11:55 p.m.

G. Review and Possible Amendment to Board Members' Policies

Ms. Harris briefly discussed the amendments to Board Policies following discussion at the July retreat.

Motion 07-019 Moved by Chair Akana, seconded by Member Gorrell:

The Board approves Members' Conduct Policies and Procedures as amended.

The motion passed unanimously.

H. Policy Reviews

Ms. Harris provided a revised draft policy submitted by Washington State University regarding Promotions and Sponsorships and noted that the policy was reviewed at the March 10, 2006 meeting. At the Board's request, language has been included related to special privileges.

Motion 07-020 Moved by Member Golberg, seconded by Chair Akana:

The Board approves Washington State University policy on Promotions and Sponsorships as presented.

The motion passed unanimously.

Ms. Harris also provided a revised draft Washington State University policy regarding Charities with suggested language changes and the addition of definitions of "charity" and "charitable purpose."

Motion 07-021 Moved by Member Gorrell, seconded by Member Golberg:

The Board approves Washington State University policy on Charities as presented.

The motion passed unanimously.

I. Staff Reports

1. Executive Director's Report

Susan Harris summarized training conducted by staff and reported on upcoming training scheduled. She also noted that a web designer will be joining staff on a temporary basis to create a new website.

Ms. Harris presented a request to change the meeting location to Yakima for an upcoming enforcement hearing. Ms. Krier provided guidance on the Open Public Meetings Act and rules under the Administrative Procedures Act for consideration. The Board determined that it would not be effective to relocate the

meeting to Yakima but noted that having some witnesses attend via telephone would be acceptable.

Ms. Harris also provided a copy of the request for Attorney General's Opinion regarding solicitation by agency employees on behalf of the Washington State Parks and Recreation Commission and Chapter 42.52 RCW.

2. Other Staff Reports

No other staff reports were given.

J. Executive or Closed Session

At 12:35 p.m. the Board moved into Closed Session to discuss potential litigation and deliberate and to receive and evaluate complaints against state employees and officers.

At 1:46 p.m. the Board returned to regular session and reported that the Stipulation and Orders in EEB Case No. 05-041, Rebecca Neal and EEB Case No. 06-022, William Yeung, have been accepted in their entirety.

K. Miscellaneous Matters/Adjournment

There being no miscellaneous matters, the meeting was adjourned at 1:47 p.m.

Approved by the Board 10/13/06